



Reprinted
February 4, 2004

SENATE BILL No. 442

DIGEST OF SB 442 (Updated February 3, 2004 2:44 pm - DI 97)

Citations Affected: IC 27-2; IC 34-46.

Synopsis: Internal insurance compliance audits. Provides that certain information related to voluntary, internal insurance compliance audits is privileged information.

Effective: July 1, 2004.

**Young R Michael, Broden, Alting,
Bray**

January 12, 2004, read first time and referred to Committee on Criminal, Civil and Public Policy.
January 29, 2004, reported favorably — Do Pass.
February 3, 2004, read second time, amended, ordered engrossed.

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SB 442—LS 6670/DI 97+



Reprinted
February 4, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 442

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-2-22 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2004]:

4 **Chapter 22. Privilege Applying to Internal Insurance**
5 **Compliance Audits**

6 **Sec. 1. As used in this chapter, "department" refers to the**
7 **department of insurance created by IC 27-1-1-1.**

8 **Sec. 2. As used in this chapter, "insurance compliance audit"**
9 **means a voluntary internal evaluation, review, assessment, audit,**
10 **or investigation for the purpose of:**

- 11 (1) identifying noncompliance;
12 (2) preventing noncompliance; or
13 (3) promoting compliance;

14 **with laws, regulations, orders, or industry or professional**
15 **standards, conducted by or on behalf of an insurer or activity**
16 **licensed or regulated under this title.**

17 **Sec. 3. As used in this chapter, "insurance compliance audit**

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document" means a document and related materials prepared in connection with an insurance compliance audit. The term does not include original underlying corporate records and documents described in section 17 of this chapter. An insurance compliance audit document includes any of the following:

(1) An insurance compliance audit report that:

(A) is prepared by an auditor who is an employee of the insurer or an independent contractor; and

(B) may include the scope of the audit, the information gained in the audit, and conclusions and recommendations, with exhibits and appendices.

(2) Memoranda and documents analyzing parts or all of an insurance compliance audit report and discussing potential implementation issues.

(3) An implementation plan that addresses:

(A) corrections of previous noncompliance;

(B) improvement of current compliance; and

(C) prevention of future noncompliance.

(4) Supporting documents, notes, records, analytic data, or other evidentiary materials generated in the course of conducting the insurance compliance audit.

Sec. 4. As used in this chapter, "insurer" has the meaning set forth in IC 27-1-2-3.

Sec. 5. As used in this chapter, "reasonable corrective action" may, where applicable, include:

(1) reimbursement of premium payments, surcharges, or other charges made;

(2) compensation for losses sustained;

(3) reinstatement of policies canceled; or

(4) another appropriate remedy;

with respect to persons adversely affected by an insurer's noncompliance with a law, a regulation, an order, or an industry or a professional standard revealed by an insurance compliance audit.

Sec. 6. Except as provided in this chapter, an insurance compliance audit document is privileged information and is not discoverable or admissible as evidence in a civil or an administrative proceeding.

Sec. 7. (a) Except as provided in this chapter, an individual involved in preparation of an insurance compliance audit or insurance compliance audit document is not subject to examination concerning the insurance compliance audit or insurance

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1 compliance audit document in a civil or an administrative
 2 proceeding. However, if the insurance compliance audit, insurance
 3 compliance audit document, or a part of the insurance compliance
 4 audit or insurance compliance audit document is not privileged, the
 5 individual may be examined concerning the part of the insurance
 6 compliance audit or insurance compliance audit document that is
 7 not privileged.

8 (b) An individual involved in the preparation of an insurance
 9 compliance audit or insurance compliance audit document who
 10 becomes aware of an alleged statutory or regulatory violation in
 11 the course of the preparation shall report the act to the insurer.

12 (c) Not more than thirty (30) days after receiving a report under
 13 subsection (b), the insurer shall provide the information to the
 14 commissioner.

15 **Sec. 8. The commissioner shall:**

16 (1) not provide to a person an insurance compliance audit
 17 document provided to the commissioner:

18 (A) voluntarily; or

19 (B) at the request of the commissioner under a claim of
 20 authority to compel disclosure under section 13 of this
 21 chapter; and

22 (2) treat an insurance compliance audit document as
 23 confidential information for purposes of IC 27-1-3-10.5
 24 without waiving the privileges established under sections 6
 25 and 7 of this chapter.

26 An insurance compliance audit document provided as described in
 27 subdivision (1) may not be used for any purpose other than to
 28 determine whether disclosed defects in an insurer's policies and
 29 procedures or inappropriate treatment of customers has been
 30 remedied or that an appropriate plan for remedy is in place.

31 **Sec. 9. An insurance compliance audit document that is**
 32 **provided to the commissioner is subject to applicable statutory or**
 33 **common law privilege, including:**

34 (1) the work product doctrine;

35 (2) attorney-client privilege; or

36 (3) the subsequent remedial measures exclusion.

37 An insurance compliance audit document provided to the
 38 commissioner is the property of the insurer and is confidential.

39 **Sec. 10. An insurer that discloses an internal compliance audit**
 40 **document to a governmental entity:**

41 (1) voluntarily; or

42 (2) as required by law;

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1 does not waive a privilege established under section 6 or 7 of this
2 chapter with respect to any other person or governmental entity.

3 Sec. 11. A privilege established under section 6 or 7 of this
4 chapter does not apply to the extent that the privilege is expressly
5 waived by the insurer that prepared or caused to be prepared an
6 insurance compliance audit document.

7 Sec. 12. A privilege established under section 6 or 7 of this
8 chapter does not apply if a court, after an in camera review,
9 requires disclosure in a civil or an administrative proceeding after
10 determining at least one (1) of the following:

11 (1) The privilege is asserted for a fraudulent purpose.

12 (2) The material is not subject to the privilege as provided
13 under section 17 of this chapter.

14 (3) The insurer fails to undertake reasonable corrective action
15 or eliminate noncompliance with applicable laws within a
16 reasonable period.

17 Sec. 13. (a) Not more than thirty (30) days after the
18 commissioner, the attorney general, or a pleading party in a civil
19 action makes a written request by certified mail for disclosure of
20 an insurance compliance audit document, the insurer that
21 prepared the insurance compliance audit document or caused the
22 insurance compliance audit document to be prepared may file a
23 petition in a court with jurisdiction in the same venue chosen by
24 the original pleading party requesting an in camera hearing to
25 determine whether the insurance compliance audit document or
26 parts of the insurance compliance audit document are subject to
27 disclosure.

28 (b) Failure by an insurer to file a petition under subsection (a)
29 waives the privilege provided under this chapter for the insurance
30 compliance audit document that is the subject of a request for
31 disclosure under subsection (a).

32 (c) An insurer asserting a privilege established under section 6
33 or 7 of this chapter in response to a request for disclosure under
34 subsection (a) shall include in the insurer's petition for an in
35 camera hearing all the information listed in section 14 of this
36 chapter.

37 (d) Not more than thirty (30) days after an insurer files a
38 petition under subsection (a), the court shall issue an order
39 scheduling an in camera hearing to determine whether the
40 insurance compliance audit document or parts of the audit
41 document are privileged or are subject to disclosure.

42 Sec. 14. An insurer asserting a privilege established under

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section 6 or 7 of this chapter in response to a request for disclosure under section 13 of this chapter shall provide to the commissioner, the attorney general, or a pleading party in a civil matter, at the time the insurer files an objection to the disclosure, the following information:

- (1) The date of the insurance compliance audit document.
- (2) The identity of the person who conducted the insurance compliance audit.
- (3) The general nature of the activities covered by the insurance compliance audit.
- (4) An identification of the parts of the insurance compliance audit document for which the privilege is asserted.

Sec. 15. (a) An insurer that asserts a privilege established under section 6 or 7 of this chapter has the burden of demonstrating the applicability of the privilege.

(b) After an insurer has established the applicability of a privilege under subsection (a), the pleading party in a civil action, including the commissioner or attorney general, that seeks disclosure for the cause described in section 12 of this chapter has the burden of proving that the:

- (1) privilege is asserted for a fraudulent purpose;
- (2) material is not subject to the privilege as provided under section 17 of this chapter; or
- (3) insurer failed to undertake reasonable corrective action or failed to eliminate noncompliance within a reasonable period.

(c) If the court finds that the privilege is asserted for a fraudulent purpose, the court shall award reasonable attorney fees to be paid by the insurer to the pleading party.

Sec. 16. (a) The parties described in section 13 of this chapter may at any time stipulate in legal proceedings before a court under this chapter to entry of an order directing whether specific information contained in an insurance compliance audit document is subject to a privilege established under section 6 or 7 of this chapter.

(b) A stipulation described in subsection (a) may be limited to the instant proceeding and, absent specific language to the contrary, is not applicable in any other proceeding.

Sec. 17. A privilege established under section 6 or 7 of this chapter does not extend to the following original underlying corporate records and documents:

- (1) Documents, communications, data, reports, or other information expressly required to be collected, developed,

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maintained, or reported to a regulatory entity under this title, other state law, or federal law.

(2) Information obtained through observation or monitoring by a regulatory entity.

(3) Information obtained from a source independent of an insurance compliance audit.

(4) Documents, communications, data, reports, memoranda, drawings, photographs, exhibits, computer records, maps, charts, graphs, surveys, and other materials prepared or maintained in the ordinary course of insurance business and not in relation to an insurance compliance audit.

Sec. 18. (a) If a privilege established under section 6 or 7 of this chapter does not apply as described in sections 11 and 12 of this chapter, a court may compel the disclosure of only the parts of an insurance compliance audit document relevant to issues in dispute in the underlying proceeding.

(b) Information required to be disclosed under subsection (a) is confidential and not public information, and a privilege established under section 6 or 7 of this chapter that otherwise applies to the information is not waived for purposes of another civil or administrative proceeding.

Sec. 19. (a) This chapter does not limit, waive, or abrogate the scope or nature of a statutory or common law privilege other than a privilege established under this chapter.

(b) This chapter does not limit the department's authority to compel the disclosure of documents necessary to further the department's general regulatory purpose.

SECTION 2. IC 34-46-2-25.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 25.4. IC 27-2-22 (Concerning certain information related to internal insurance compliance audits).

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SENATE MOTION

Madam President: I move that Senator Alting be removed as author of Senate Bill 442 and that Senator Young R Michael be substituted therefor.

ALTING

SENATE MOTION

Madam President: I move that Senator Alting be added as coauthor of Senate Bill 442.

YOUNG R MICHAEL

SENATE MOTION

Madam President: I move that Senator Bray be added as coauthor of Senate Bill 442.

YOUNG R MICHAEL

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COMMITTEE REPORT

Madam President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred Senate Bill No. 442, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 442 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 6, Nays 3.

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SENATE MOTION

Madam President: I move that Senator Broden be added as second author of Engrossed Senate Bill 442.

YOUNG R MICHAEL

SENATE MOTION

Madam President: I move that Senate Bill 442 be amended to read as follows:

Page 5, between lines 14 and 15, begin a new paragraph and insert: **"(c) If the court finds that the privilege is asserted for a fraudulent purpose, the court shall award reasonable attorney fees to be paid by the insurer to the pleading party."**

(Reference is to SB 442 as printed January 30, 2004.)

LANANE

SENATE MOTION

Madam President: I move that Senate Bill 442 be amended to read as follows:

Page 2, line 4, delete "16" and insert "17".

Page 2, line 24, after "5." insert **"As used in this chapter, "reasonable corrective action" may, where applicable, include:**

- (1) reimbursement of premium payments, surcharges, or other charges made;**
- (2) compensation for losses sustained;**
- (3) reinstatement of policies canceled; or**
- (4) another appropriate remedy;**

with respect to persons adversely affected by an insurer's noncompliance with a law, a regulation, an order, or an industry or a professional standard revealed by an insurance compliance audit.

Sec. 6."

Page 2, line 28, delete "6." and insert "7".

Page 3, line 4, delete "7." and insert "8".

Page 3, line 9, delete "12" and insert "13".

Page 3, line 13, delete "5" and insert "6".

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Page 3, line 14, delete "6" and insert "7".
 Page 3, line 20, delete "8." and insert "9".
 Page 3, line 28, delete "9." and insert "10".
 Page 3, line 32, delete "5 or 6" and insert "6 or 7".
 Page 3, line 34, delete "10." and insert "11".
 Page 3, line 34, delete "5 or 6" and insert "6 or 7".
 Page 3, line 38, delete "11." and insert "12".
 Page 3, line 38, delete "5 or 6" and insert "6 or 7".
 Page 4, line 2, delete "16" and insert "17".
 Page 4, line 3, delete "a".
 Page 4, line 3, delete "plan of".
 Page 4, line 6, delete "12." and insert "13".
 Page 4, line 21, delete "5" and insert "6".
 Page 4, line 22, delete "6" and insert "7".
 Page 4, line 24, delete "13" and insert "14".
 Page 4, line 31, delete "13." and insert "14".
 Page 4, line 32, delete "5 or 6" and insert "6 or 7".
 Page 4, line 33, delete "12" and insert "13".
 Page 5, line 2, delete "14." and insert "15".
 Page 5, line 3, delete "5 or 6" and insert "6 or 7".
 Page 5, line 8, delete "11" and insert "12".
 Page 5, line 12, delete "16" and insert "17".
 Page 5, line 15, delete "15." and insert "16".
 Page 5, line 15, delete "12" and insert "13".
 Page 5, line 19, delete "5 or 6" and insert "6 or 7".
 Page 5, line 24, delete "16." and insert "17".
 Page 5, line 24, delete "5 or 6" and insert "6 or 7".
 Page 5, line 40, delete "17." and insert "18".
 Page 5, line 40, delete "5 or 6" and insert "6 or 7".
 Page 5, line 41, delete "10 and 11" and insert "11 and 12".
 Page 6, line 5, delete "5 or 6" and insert "6 or 7".
 Page 6, line 8, delete "18." and insert "19".

(Reference is to SB 442 as printed January 30, 2004.)

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